

ARTICLE V. PROTECTION OF NATIVE PLANTS*

***Cross references:** Nuisance trees, etc., § 18-8; posting notices on trees, § 19-10; environmentally sensitive lanes, § 46-61 et seq.; street encroachments, § 47-66 et seq.; fees for encroachment permits on public ways, § 47-100; plant materials, App. B, § 7.500.

Sec. 46-105. Definitions.

In this article, unless the context otherwise requires:

Destroy means to kill, or cause the death of any protected native plant by any means.

Mutilate means to deface, maim, damage or disfigure any protected native plant by shooting, chopping, pushing over, burning, cutting or any other means.

Native plant permit means a permit issued by the city pursuant to the provisions of this article for the purpose of removing from the premises, relocating on the premises, or destroying any protected native plant.

Native plant program means a development plan specifying the proposed treatment of protected native plants for which a native plant permit is required.

Protected native plant means cacti which are three (3) feet or greater in height and trees which are four (4) inches or greater in caliper of the following species:

TABLE INSET:

TREES	
<i>Botanical Name</i>	<i>Common Name</i>
<i>Acacia constricta</i>	Whitethorn Acacia
<i>Acacia greggii</i>	Catclaw Acacia
<i>Berberis Haematocarpa</i>	Red Barberry
<i>Canotia holocantha</i>	Crucifixion Thorn
<i>Celtis pallida</i>	Desert Hackberry
<i>Cercidium floridum</i>	Blue Palo Verde
<i>Cercidium microphyllum</i>	Foothill Palo Verde
<i>Chilopsis linearis</i>	Desert Willow

Juniperous species	Juniper
Olneya tesota	Ironwood
Populus fremontii	Cottonwood
Prosopis species	Mesquite
Quercus species	Scrub Oak
Rhus ovata	Sugar Sumac
Vauquelinea Californica	Arizona Rosewood
CACTI	
<i>Botanical Name</i>	<i>Common Name</i>
Carnegiea gigantea	Saguaro
Ferocactus species	Barrel
Fouquieria splendens	Ocotillo
Peniocereus Greggii	Desert Night-Blooming Cereus
Yucca elata	Soaptree Yucca

Relocate shall mean to transplant a protected native plant to another location on the premises.

Remove shall mean to transport a protected native plant from the premises on which it has been growing.

Unsalvageable plant means a protected native plant which cannot be successfully relocated due to any of the following:

- (1) Deteriorated health from disease, infestation, or natural causes
- (2) Physical constraints related to plant location, orientation, or general condition which obstruct and/or prevent the application of approved relocation techniques.

(Ord. No. 2261, § 1, 8-15-89; Ord. No. 3302, § 1, 3-21-00)

Sec. 46-106. Native plant permit--Required.

No person shall destroy, mutilate, remove from the premises, or relocate to another place on the premises any protected native plant existing within the city without first obtaining a native plant permit from the city according to the terms of this article.

(Ord. No. 2261, § 1, 8-15-89)

Sec. 46-107. Same--Validity.

(a) The written permits required by this article shall be issued by the project review division of the city subject to the provisions of this article and in conformance with the criteria of section 7.500 of the zoning ordinance. No permit shall be valid unless signed by the city manager or a designated representative.

(b) These provisions of this article are not intended to replace, modify, or circumvent the requirements of any other state, federal, or local agency.

(Ord. No. 2261, § 1, 8-15-89)

Sec. 46-108. Same--Application; form and content.

(a) The city manager or designee shall prescribe and provide an application form for use by applicants for permits as required by this chapter. The application shall show all such information and details required to document the nature and extent of the permit request.

(b) In no event shall a native plant permit be issued unless a native plant program, prepared in accordance with the requirements of section 7.500 of the zoning ordinance, is presented with the application.

(Ord. No. 2261, § 1, 8-15-89)

Sec. 46-109. Responsibility for obtaining permit.

A native plant permit may be obtained by the property owner of record or by another party acting as agent upon presentation of written authorization by the property owner of record.

(Ord. No. 2261, § 1, 8-15-89)

Sec. 46-110. Action on applications.

Applications may be approved, approved conditionally, or denied. Where the city manager or designee determines that the application is in conformance with the provisions of this article and with the provisions of section 7.500 of the zoning ordinance, a permit shall be issued, with such conditions attached as necessary to insure that the native plant program is successfully accomplished. Where it is determined that the application is not in conformance with the provisions of this article and with the provisions of section 7.500 of the zoning ordinance, the application shall be denied. Action taken on applications may be appealed to the development review board according to the procedures specified in section 7.500 of the zoning ordinance.

(Ord. No. 2261, § 1, 8-15-89)

Sec. 46-111. Permit approval--Timing.

No native plant permit shall be issued unless an application is submitted in conjunction with an existing or proposed development which requires development review board approval, city council approval, board of adjustment approval, or approval of a plat as determined by the city manager or designee. For proposed development, the native plant permit shall not be issued until the necessary development approvals have been secured.

(Ord. No. 2261, § 1, 8-15-89; Ord. No. 3302, § 2, 3-21-00)

Sec. 46-112. Same--Modification.

It shall be unlawful to modify, alter, or amend an approved native plant permit or an accompanying native plant program without reapplication for a native plant permit according to the provisions of this article.

(Ord. No. 2261, § 1, 8-15-89)

Sec. 46-113. Same--Term.

(a) Every permit issued by the city under the provisions of this article shall expire and become null and void if the work authorized under the provisions of this article is not commenced within ninety (90) days from the date of issuance, unless otherwise specified as a condition of the permit approval or if the work authorized under the provisions of this article is suspended or abandoned for a period of ninety (90) days. Before such work can be recommenced, a new permit shall be obtained to do so pursuant to the provisions of this article.

(b) Work shall be completed within the time period specified on the native plant permit. The city manager or designee shall have the authority to grant a ninety-day extension of the time limit for completion of the work upon written request of the applicant. Failure to comply with the time limitation without an extension authorized by the city shall require application for a new permit pursuant to the provisions of this article.

(Ord. No. 2261, § 1, 8-15-89)

Sec. 46-114. Permit fees.

Upon application for a native plant permit, a fee shall be paid to the city, plus an additional fee for each protected native plant to be destroyed or relocated as specified in the native plant program. In addition, there are fees for modification of an approved native plant permit and modification of the native plant relocation methodology of the approved native plant program as required for permit approval.

(Ord. No. 2261, § 1, 8-15-89; Ord. No. 3302, § 3, 3-21-00; Ord. No. 3378, § 1, 6-4-01)

Sec. 46-115. Exemptions.

The city, the county, the state and the United States Government shall be exempted from the payment of fees herein required, provided that only such property occupied, operated, and maintained by the above-mentioned agencies shall be so exempted. All other provisions of this article shall apply to these agencies.

(Ord. No. 2261, § 1, 8-15-89)

Sec. 46-116. Plants to be tagged; requirements.

(a) All protected native plants scheduled to remain in place or authorized for destruction or relocation by the approved native plant permit must be tagged and numbered prior to permit submittal. Tags shall be color-coded according to the following schedule so that the status of each plant affected by the development proposal may be easily identified: Plants proposed for destruction shall be tagged with blue plastic tape; plants proposed for relocation shall be tagged with red plastic tape; and plants proposed to remain shall be tagged with white plastic tape.

(b) Tags required by this article shall be affixed in a visible location on the plant. Once affixed,

the tags shall not be removed until the plants are removed, relocated, or destroyed in compliance with the native plant permit and a final inspection has been made.

(Ord. No. 2261, § 1, 8-15-89)

Sec. 46-117. Timing of work authorized by this chapter.

(a) Protected native plants authorized for destruction under the provisions of this article shall not be destroyed within a time period specified as follows:

- (1) One (1) to five (5) protected native plants to be destroyed, fifteen (15) days.
- (2) Six (6) to fifteen (15) protected native plants to be destroyed, thirty (30) days.
- (3) Sixteen (16) or more protected native plants to be destroyed, sixty (60) days.

This time period shall commence on the date of permit application. This requirement shall not apply to those native plants deemed to be unsalvageable by the city and noted as such on the permit.

(b) In no instance shall destruction of protected native plants occur prior to issuance of a native plant permit by the city.

(Ord. No. 2261, § 1, 8-15-89)

Sec. 46-118. Compliance with approved permit; revocation.

All work authorized by a permit issued in conformance with the terms of this article shall be completed as authorized. Failure to comply with the conditions of permit approval or the approved native plant program shall constitute a violation of the native plant permit and may be punishable by permit revocation and/or citation under the authority of section 46-120 of this chapter.

(Ord. No. 2261, § 1, 8-15-89)

Sec. 46-119. Inspections.

All aspects of the work performed as a result of a native plant permit issued under the provisions of this article shall be subject to inspection by the city.

(Ord. No. 2261, § 1, 8-15-89)

Sec. 46-120. Penalties.

(a) *Generally.* Any violation of this article is a Class 1 misdemeanor which, upon conviction, may be punishable by a fine not exceeding two thousand five hundred dollars (\$2,500.00), or by imprisonment for a term not to exceed six (6) months, or by both such fine and imprisonment, at the discretion of the city magistrate. Each day this violation continues shall constitute a separate offense.

(b) A native plant permit shall not be issued after a violation resulting in destruction, removal, or relocation of protected native plants has been discovered until such time as a restoration program has been approved and the property has been restored with protected native plants of equivalent type, size, density, distribution, and condition as existed on the property prior to the violation. A program for restoration of the site shall be approved by the city manager or designee and shall be based on the expected type, size, density, distribution, and condition of protected native plants within the vegetation communities in which the violation occurred. Appeal of a decision made by the city manager or designee regarding a restoration program shall be heard by the development review board. Appeal of a decision made by the development review board regarding a restoration program may be made to the city council in

accordance with the rules and procedures established in section 1.400 of the zoning ordinance.

(c) *Waiver of restoration requirement generally.* The city manager or designee may waive the restoration requirement in subsection (b) above when it will further the purpose of this article and be in the best interest of the community, and when it is demonstrated that development of the property is imminent as determined by the following criteria:

- (1) A development proposal is submitted for approval by development review board within ten (10) days of the notice of violation.
- (2) The general plan designation of the property is consistent with the proposed development.
- (3) The zoning of the property is consistent with the proposed development.
- (4) Infrastructure improvements are in place which can support the proposed development.

(d) *Granting of waiver; cost of replacing and maintaining native plant materials.*

- (1) If a waiver is granted, a sum of money shall be paid to the city for the purpose of replacing and maintaining native plant materials. The development review board shall determine the sum of money to be paid to the city from the schedule available at the quality compliance department.
- (2) Determination of the sum of money to be paid to the city pursuant to this section shall be based upon the type, size, density, distribution, and condition of plant materials that existed on the property prior to the violation, or upon inspection of the remains of plant materials or other physical evidence as may be available. Appeal of a decision of the development review board regarding this determination may be made to city council in accordance with the rules and procedures established in section 1.400 of the zoning ordinance.

(Ord. No. 2261, § 1, 8-15-89; Ord. No. 3302, § 4, 3-21-00; Ord. No. 3378, § 1, 6-4-01)

Secs. 46-121--46-129. Reserved.